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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic reports of States parties due in 2000

Addendum

BELGIUM*

[12 February 2001]

* This report contains in a single document the eleventh, twelfth and thirteenth periodic reports of Belgium due on 6 September 1996, 1998 and 2000, respectively. For the ninth and tenth periodic reports of Belgium, contained in a single document, and the summary records of the Committee's meetings at which the reports were considered, see: CERD/C/260/Add.2 and CERD/C/SR.1200-1201 and 1211-1212.

The information submitted by Belgium in accordance with the consolidated guidelines on the initial part of reports of States parties is contained in core document HRI/CORE/1/Add.1/Rev.1.

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Introduction

1. In accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, Belgium has prepared a new report on the legislative, judicial, administrative or other measures adopted at the internal level to give effect to international commitments undertaken as a result of the ratification of the Convention.

2. This report takes the form of a single document containing the eleventh and twelfth periodic reports due in September 1996 and 1998.

3. It will be recalled that the ninth and tenth reports, which were also contained in a single document, were considered by the Committee at a public meeting held on 20 March 1997.

4. The document now being submitted to the Committee is designed to provide it with information on the latest developments in Belgium since 1996 and on the various measures taken in several areas of the life of the country in order to comply with the provisions of the very important legal instrument for the protection of human rights constituted by the International Convention on the Elimination of All Forms of Racial Discrimination.

5. The submission of this new Belgian report takes place in the context of the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which will be held in September 2001.

6. Belgium played an active role in the preparations for the European Conference against Racism, which was held at the Council of Europe from 11 to 13 October 2000, and it is determined to cooperate fully in the preparations for and the holding of the World Conference.

Articles 2, 3, 4 and 5

I. LEGISLATIVE DEVELOPMENT

A. Ratification of international conventions

7. Since the consideration of the previous report of Belgium by the Committee on the Elimination of Racial Discrimination, Belgium ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 25 June 1999. The Convention entered into force on 25 July 1999.

8. Belgium has signed the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. It has set the necessary procedures for the ratification of these protocols in motion and is about to do the same for the Convention on the Worst Forms of Child Labour.

9. Belgium deposited its instrument of ratification of the Rome Statute of the International Criminal Court with the Secretary-General of the United Nations on 28 June 2000.

B. Acceptance of article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination

10. On 10 October 2000, Belgium deposited a declaration with the Secretary-General of the United Nations stating that it accepts article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which it ratified on 7 August 1975.

11. In the declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination under article 14 of the Convention, Belgium stated that, in accordance with paragraph 2 of that article, the Centre for Equal Opportunity and Action to Combat Racism, which was established by the Act of 15 February 1993, had been designated as competent to receive and consider petitions from individuals and groups of individuals within Belgian jurisdiction who claim to be victims of a violation of any of the rights set forth in the Convention.

12. The declaration also states that, in accordance with paragraph 6 of that article, the Ministry of Justice is responsible for submitting explanations or statements to the Committee in order to clarify the matters in question and the remedies that might have been taken.

C. Amendment of the Constitution and the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia and proposals for the improved implementation of the Act

1. Decriminalization of racist offences against the legislation on the press

13. The implementation of existing legislation on racism (Act of 30 July 1981 to suppress certain acts based on racism or xenophobia and Act of 23 March 1995 prohibiting the denial, minimization, justification or approval of the genocide committed by the German national socialist regime during the Second World War) gives rise to serious problems when such offences are committed by means of printed, reproduced or disseminated texts (newspapers, periodicals, pamphlets, election leaflets, posters, etc.), since they then constitute offences against the legislation on the press which could, under the old article 150 of the Constitution, be tried only by the Court of Assize.[1]

14. Writers on law describe the current situation as one involving de facto impunity.[2] Only two cases have led to proceedings in the Courts of Assize. One involved the implementation of the 1981 Act. The complaint related to the dissemination by the Parti des Forces Nouvelles of a pamphlet entitled "Poland 1939 - Bruyères 1989?, Immigration = Invasion" and "European Belgians, it's time to wake up". The Nivelles Court of First Instance had decided to refer the accused persons to the Court of Assize on the charge of an offence against the legislation on the press. In a ruling of 23 June 1994, the Hainaut Court of Assize sentenced the accused to the maximum penalties provided for by the 1981 Act. Writers on law, who described this situation as one involving de facto impunity, drew attention to a number of reasons why the courts usually decided not to prosecute this type of offence.[3] These include the cost, cumbersomeness and slow pace of assize proceedings owing to special rules of procedure, the publicity involved and appropriateness.

15. The governmental agreement of 28 June 1995 expressly requested that the question of the decriminalization of offences against the legislation on the press should be considered and that article 150 of the Constitution should possibly be amended. Thus, during the current legislative term, several proposed amendments of that article were submitted with a view to the prosecution and trial of offences against the legislation on the press.

16. On 14 January 1999, a parliamentary working group composed of senators and deputies from the various democratic parties and set up to consider the bills and proposed amendments to the Constitution agreed on a proposal for the amendment of article 150 of the Constitution.

17. Article 150 of the Constitution was thus recently amended (*Moniteur belge* of 29 May 1999). It reads: "A jury shall be empanelled for all criminal cases and political and press offences, with the exception of press offences based on racism or xenophobia."

18. The Constitution now provides for an exception to the jurisdiction of the Court of Assize in the case of press offences based on racism and xenophobia. Since this article of the Constitution does not refer to the Act of 30 July 1981, the correctional court may henceforth hear not only press offences punishable under the Act, but also other press offences, such as defamation and libel (art. 443 of the Penal Code) and negationism (Act of 23 March 1995), if they prove to involve racism and xenophobia. It is hoped that this constitutional amendment will make it possible satisfactorily to prosecute persons who commit this type of offence.

2. Penalties relating to the exercise of political rights

19. The Act of 30 July 1981 was recently amended. It provides that an additional penalty prohibiting certain political rights for a period of 5 to 10 years may be imposed by the court on a person already sentenced to a main penalty. These rights are referred to in article 31 of the Penal Code. They include the right to hold posts, employment or public office and the right to be elected. In the framework of the Act of 23 March 1995, moreover, it was decided that this prohibition is to be extended to all convicted persons and not only to repeat offenders. This additional penalty is an optional one to be decided on by the court.

3. Financial penalties applicable to anti-democratic political parties

20. It should be pointed out that the Act of 4 July 1989 on the limitation and control of electoral expenditure and the financing and open accountability of political parties provides for a primarily public system of party financing which replaces the former system consisting of a mixture of contributions from companies and individuals that were tax deductible in some cases. The main source of financing is thus public and is the result of the allocation granted by the State to any political party in the Chamber and the Senate represented by at least one member.

21. The Act of 10 April 1995 introduced a provision stating that the allocation may be received only by parties that have included a provision in their statues or programmes by which they undertake to respect the rights recognized in the European Convention on Human Rights.

22. All political parties have fulfilled this obligation by including this undertaking in their statutes, but this has not prevented some from publishing and disseminating racist and xenophobic pamphlets, publications and other writings and not being penalized financially.

23. Parliamentary bills have been submitted in order to clarify the situation and propose a slightly different system, but the purpose is still to make political parties which commit racist or xenophobic acts with public funds[6] liable to financial penalties.

24. It has been decided to give the Council of State jurisdiction to hear and rule on any complaint filed by at least five members of the Control Commission. Such a complaint may be filed when five members of the Commission consider that, through the intermediary of its members, its candidates or its elected officials, a political party has clearly and consistently demonstrated its hostility towards the rights guaranteed by the European Convention on Human Rights. Based on the complaint, a bilingual chamber of the Council of State may decide to take away all or part of the party's allocation. A non-suspensive appeal against the lawfulness of this decision[7] may be lodged in the Court of Cassation.

25. The text was adopted in plenary in the Chamber on 10 December 1998. The question having become bicameral, in accordance with article 77 of the Constitution, it was referred to the Senate, which adopted it on 4 February 1999 with some technical amendments.[8]

26. The Act entered into force on 28 March 1999, but the machinery for its implementation must be decided on by a royal decree discussed in the Council of Ministers.

27. This Act is without any doubt a step forward in financial penalties for parties whose propaganda is openly racist and xenophobic.

II. OTHER MEASURES

A. Agreement between the Postal Service and the Centre for Equal Opportunity and Action to Combat Racism on the prohibition of certain printed texts by political parties

28. Cooperation was recently established by way of a protocol of agreement between the postal service and the Centre for Equal Opportunity and Action to Combat Racism on how to determine whether some materials handed over unwrapped to the postal service for distribution[7] are in conformity with the 1981 and 1995 Acts.

29. In the event of doubt as to whether materials handed over to the postal service for distribution are in conformity with the above-mentioned legislation, the protocol enables the postal service to stop the materials from being delivered and, if necessary, ask the Centre for Equal Opportunity and Action to Combat Racism for its opinion, which must be given within 48 hours of the request, but is not binding on the postal service. It is for postal service management officials to decide whether or not the materials in question will be distributed.

B. Awareness activities to combat racism in the army

30. Following reports of acts, particularly acts of a racist nature, which were allegedly committed by soldiers from a Belgian battalion of the international peacekeeping force in Somalia and for which sentences were handed down, the Minister of Defence took strong action, by agreement with the army chief of staff, to rid the army of racism and, in particular, make multiculturalism a positive feature of the army's corporate culture. The general watchword adopted in 1999 thus relates to the topic of racism and xenophobia. A code of conduct was also drawn up and includes the question of racism and xenophobia.

C. Awareness and training activities for criminal justice officials

31. It should be noted that efforts have been made to increase criminal justice officials' awareness with a view to the adoption of a uniform policy in the prosecution of persons who commit racist offences. A specific training programme for judges has thus been drawn up on action to combat racism and xenophobia. The purpose of such training is to increase their awareness of the enforcement of the 1981 Act and the use of criminal mediation and to provide them with information on the experience gained by the Centre for Equal Opportunity and Action to Combat Racism and special treatment by the criminal justice system of foreigners and persons of foreign origin (based on the results of scientific studies and the available statistical data). Such training has been provided in a decentralized way by the Centre for Equal Opportunity and Action to Combat Racism since 1999.

D. Joint circular from the Minister of Justice and the Procurators' Association on information which may be made available to the press by the judiciary and the police during the pre-trial investigation phase

32. A new joint circular from the Minister of Justice and the Procurators' Association, which entered into force on 15 May 1999, applies to the communication of information to the press by the courts and the police in the context of pre-trial investigations. Its purpose is to give practical and uniform substance to the legal provisions contained in the Franchimont Act of 12 March 1998 on the improvement of criminal investigation procedure. It provides, inter alia, that only some data on persons involved in a case, such as their sex, age and, possibly, place of residence, may be communicated on the initiative of the judicial authorities. Personal data such as ethnic origin and nationality cannot, however, be communicated unless they are relevant. The circular helps prevent the stigmatization of minorities and to promote the general policy of combating racism.

Article 2

Measures taken to encourage integrationist multiracial organizations and movements and other means of eliminating barriers between races and to discourage anything which tends to strengthen racial division

French Community Commission

33. The stakes are particularly high in a region where over 30 per cent of the inhabitants are non-Belgian and the concentration in some communes is over 50 per cent.

34. The Government of the Brussels-Capital Region has chosen a number of areas in which to carry out its immigration policy:

Action to prevent social and cultural ghettos;

Adaptation of employment policy;

Refocusing of economic policy to emphasize the maintenance of the secondary sector in a region where the growth of the tertiary sector is likely to shut out young second-generation Belgians, who are to be found mainly in vocational-type training;

Making special funds available to communes and associations which propose social integration projects.

35. The college of the Community Commission is working to make social integration and the coexistence of the different local communities a priority. The purpose of this policy is to promote the social integration of all inhabitants, thereby enabling them to become active citizens and to contribute to community life. This calls for the establishment of opportunities for education, training and access to jobs, culture and the enjoyment of the city in order to enable persons who live in problem-ridden areas to become better integrated into society and, in turn, to have a "social multiplier effect".

36. "Coexistence" means "the establishment of respectful and positive relations between the various local communities". It involves cross-cultural exchanges and joint activities designed to solve problems of compartmentalization and lack of understanding.

37. The types of activities for which support is provided by community projects focus on:

Introduction to citizenship: information on naturalization and community services; and the practice of solidarity, inter alia, through neighbourhood social economies activities, the prevention of antisocial behaviour, dialogue, mutual recognition by young people, the police and merchants and the discovery and symbolic rehabilitation of neighbourhoods, for example, through knowledge of their social history;

Awareness-raising activities: awareness-raising and training activities to help groups learn to live together (social welfare workers, police officers, neighbourhood officials, community services officials, Public Social Welfare Centre (CPAS) officials, outreach officials, mediators and medical and social welfare officials); community information and training for the public and officials in matters relating to safe and healthy housing;

activities involving the cultural aspects of creating a friendly environment; extracurricular activities (outreach activities in and around schools); "homework schools"; French literacy classes for parents; making teachers and parents aware of ways of improving children's school performance; promotion of parent-teacher associations;

Public activities: strengthening existing activities (cross-cultural and intergenerational meetings, sports and cultural events), outdoor public areas (playgrounds, metro stations, commercial centres), intercommunity meetings and community development projects in cooperation with the beneficiary public.

Article 4

Flemish Region

38. The first initiative to be mentioned in this regard is the training programme organized for the staff of the Flemish Service for Employment and Vocational Training (VDAB). In April 1999, about 30 persons were trained for BWM (Immigrant Job Assistance), which will in turn train some 600 consultants, project managers and administrative staff to deal with the question of discriminatory job offers. A workshop will then be organized to sum up the situation. Agreements have also been reached on a training module for module leaders (formerly, instructors), based on the BWM text relating to the non-discriminatory treatment of new arrivals and ways of solving problems.

39. The second initiative involves preparing a practical guide in order to launch positive action plans in government agencies, such as administrations and local Flemish government agencies and offices, which focus not only on personnel policies, but also on the availability of government services.

III. ACT OF 15 DECEMBER 1980 ON THE ENTRY, TEMPORARY AND PERMANENT RESIDENCE AND REMOVAL OF ALIENS AND THE ACT OF 22 DECEMBER 1999 ON THE REGULARIZATION OF CERTAIN CATEGORIES OF ALIENS RESIDING IN THE TERRITORY OF THE KINGDOM

40. The Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens has been amended several times since 1993, inter alia, by the following texts:

The first amendment is to be found in the Act of 8 March 1995 containing criminal law provisions against carriers who violate the provisions of the Act of 15 December 1980 relating to them;

The Act of 13 April 1995 contains provisions designed to combat the traffic in persons;

The Act of 15 December 1980 was further amended by the following two acts in order to incorporate the various international commitments Belgium has undertaken since 1990 in Belgian positive law:

The Act of 10 July 1996;

The Act of 15 July 1996, which also amended the Organization Act of 8 July 1976 on Public Social Welfare Centres;

The Acts of 9 March 1998 and 29 April and 7 May 1999 also amended the Act of 15 December 1980;

The Royal Decree of 12 June 1998 gave effect to the new rules for the application of Community law on the free movement of Community nationals and assimilated persons;

In the context of the Act of 15 December 1980, cases were described in which some particular situations may be regularized, such as that of the Kosovars' special status;

A one-time regularization operation was provided for by the Act of 22 December 1999 on the regularization of the residence of some categories of aliens in the territory of the Kingdom.

A. Action to combat illegal immigration networks and the traffic in persons

1. Criminal law provisions on illegal immigration

(a) General provisions

41. The Act of 15 July 1996 extended the offence of assisting illegal immigration to cover cases in which the rendering of such assistance in Belgium furthers illegal entry into or residence in a member State of the Schengen area (art. 77 of the Act of 15 December 1980).

42. In this connection, it is stated that aid or assistance offered to an alien for purely humanitarian reasons is not punishable. It should be noted that the term "purely" was recently replaced (Act of 29 April 1999) by the term "mainly", which is less restrictive, although, in practice, humanitarian reasons are interpreted quite broadly.

(b) Provisions relating to carriers

43. The Act of 8 March 1995 contains the following amendments to the Act of 15 December 1980:

An increase in the criminal fine imposed on carriers who, during the same journey, carry up to five passengers who do not possess the documents required for entry into Belgium; and doubling of the fine in the event of repetition (art. 74/2);

The inclusion of article 74/4 bis, enabling the Minister of the Interior or his representative to impose an administrative fine on any public or private air or sea carrier and any public or private carrier of persons providing international road connections by bus, coach or minibus.

44. This penalty amounts to 150,000 francs per person who is transported to Belgium or who, during a journey to a third country, passes through Belgium and does not have the documents required for entry into or transit through Belgium.

45. The decision to impose such a fine is immediately enforceable. If the carrier fails to pay or provide security for the administrative fine, the Minister or his representative may decide to seize the means of transport in question or another means of transport belonging to the same carrier. Protocols of agreement have, however, been concluded with reliable carriers, exempting them from the administrative fine.

46. The Act of 15 July 1996 changed the system of administrative penalties, providing that an airline which transports an alien to Belgium during a journey to a third country may also receive an administrative fine if the alien does not possess an airport transit visa.

47. The obligations of carriers in relation to the introduction of illegal immigrants into Belgium (art. 74/4) are also specified in the 1996 Acts. The amendment is designed to make the obligation to take an alien back applicable to all cases in which access to the territory is denied under article 3 of the Act of 15 December 1980.

2. Criminal law provisions on the traffic in persons

48. The Act of 13 April 1995 containing provisions to combat the traffic in persons and child pornography inserted an article 77 bis in the Act of 15 December 1980.

49. Article 77 bis provides for criminal penalties for "Anyone who, in any way whatever, either directly or through an intermediary, helps to allow the entry into and residence of an alien in the Kingdom and who, in so doing: (a) subjects the alien, either directly or indirectly, to fraudulent practices, violence, threats or any form of constraint; or (b) takes advantage of the particularly vulnerable position in which the alien is placed as a result of his illegal or insecure administrative status, pregnancy, illness, infirmity or physical or mental disability".

B. Provisions on improved immigration controls and, correlatively, an effective policy on the removal of aliens (1996 Acts)

50. The obligation of aliens who are not European Union nationals and whose stay will not exceed three months to report to the communal authorities has been reduced from eight to three working days (art. 5, para. 1). The eight working days are still valid in the case of European Union nationals (art. 41 bis).

51. There has been an increase in the number of cases in which refoulement may be ordered against an alien who wishes to enter Belgian territory, inter alia, when he is named in the Schengen information system as a person to be refused entry or when he cannot provide, as appropriate, documents to justify the purpose and conditions of his stay (art. 3, para. 1).

52. There has been an increase in the number of cases in which an order to leave the territory may be issued against an alien, inter alia, when he is named in the Schengen information system as a person to be refused entry (new art. 7, para. 1).

53. Changes have also been made in respect of the detention and custody of aliens, including an extension of the period of time during which they may be detained and held in custody (art. 7, paras. 4 et seq., art. 25, paras. 4 et seq., art. 29, paras. 2 et seq., art. 74/5, para. 3, art. 74/6, para. 2).

54. Previously, the period of time was up to two months. However, it was found that such a period was not long enough to organize the removal of an illegal alien. Statistics showed that foreign embassies rarely issued the laissez-passer required for the repatriation of an alien without the required documents by the deadline, since the alien provided false or incomplete information or refused to cooperate with the Belgian authorities and the embassy of the country of origin. The possibility was therefore introduced of increasing the length of detention by periods of two months, up to a maximum of eight months.

55. The Act of 29 April 1999, which entered into force on 6 July 1999, reduced the period during which an alien could be detained and held in custody to five months, except as required by public order or national security (maximum period of eight months).

56. The extendable period of detention or custody is designed to encourage aliens to cooperate with the authorities. The extension is, however, subject to strict requirements and involves tighter controls by the courts.

57. The extension of the time period is subject to the following conditions: the necessary steps for the expulsion of aliens must be taken within seven days of detention and custody; the case must be followed with the greatest diligence and the aliens' actual expulsion within a reasonable time must remain possible.

58. Judicial controls are carried out by the Judges' Council Chamber of the Correctional Court in first instance and by the Indictment Division of the Court of Appeal in second instance and may still be appealed to the Court of Cassation.

59. An alien held in a specific place on the border may appeal the initial decision to hold him, as well as the decision to extend the detention order. Previously, he could appeal only the decision to extend his detention (art. 71, para. 2, of the Act of 15 December 1980, as amended by the second Act of 9 March 1998).

60. After the second extension of the period of detention or custody, the order must be signed by the Minster of the Interior, who is also required to bring the case before the Judges' Council Chamber of the Correctional Court within five days of the extension for a ruling on its validity (art. 74).

61. It should be noted that asylum-seekers and "INADS" ("inadmissibles" or aliens who try to enter the territory illegally) may be held in a centre located at the border (art. 74/5, as amended by the first Act of 9 March 1998). Previously, such a measure was applicable only to asylum-seekers.

62. The Act of 15 July 1996 amending article 74/7 of the Act of 5 December 1980 on procedures for the administrative arrest of an alien by the police pending a decision of the Aliens' Office provides that an alien who is not in possession of papers or documents required by law may not be deprived of liberty for more than 24 hours.

63. The Act of 15 July 1996 also amended the system for the expulsion of students who are not European Union nationals (art. 61 of the Act of 15 December 1980). The regulations on the residence of students and their families have been adapted and improved, although there have been no changes in the basic residence requirements for students.

64. The main change is the elimination of the expulsion order which could be issued against a student in some cases, with the result that he was no longer entitled to enter the territory for 10 years.

65. The second change is the reorganization of the system by which an order to leave the territory may be issued against a student and members of his family:

Where there are subjective circumstances, the Minister of the Interior must sign the expulsion order, as, for example where it is assumed that a student is continuing his studies for too long a time, based on his results. In such a case, the Minister must ask for the opinion of the education establishment concerned. The conditions for the application of this rule were specified in the Royal Decree of 8 October 1981 on the entry, temporary and permanent residence and removal of aliens (art. 103/2);

Where there are well-defined objective circumstances, the expulsion order may also be issued by the representative of the Minister (Aliens' Office), as, for example, when a student extends his stay after he has completed his studies and is no longer in possession of a regular residence permit.

66. If the student must leave the country, an expulsion order must also be issued against members of his family. It should be noted that, under article 10 bis, paragraph 1 (2), of the Act of 15 December 1980 (unamended), it is possible to expel the members of the student's family only when they do not meet the conditions set for their stay.

C. Specific provisions on refugees

67. The Act of 15 December 1980 was amended by the 1996 Acts on the basis of these provisions of the Convention applying the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Controls at the Common Frontiers, signed on 15 June 1990, and the Dublin Convention of 15 June 1990 Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities.

68. Some refinements of the asylum procedure were introduced on the basis of these conventions, but it was not basically changed. Amendments were also introduced by the Acts of 9 March 1998.

69. The following have been included in the regulations relating to refugees:

A phase during which the State responsible for examining requests for asylum is determined (arts. 51/5, 51/6 and 51/7);

Exhaustive criteria for taking asylum-seekers' fingerprints (art. 51/3, paras. 1 and 2);

Monitoring of the handling and use of fingerprints and other personal data of asylum-seekers by the Belgian Privacy Commission (new arts. 49 bis and 51/3, para. 3).

With regard to remedies:

(i) The repeal of article 57/11, paragraph 2, of the Act of 15 December 1980 by the Act of 9 March 1998 following the ruling of the Arbitration Court of 13 November 1996. This provision enabled the Minister to refer a case to the Standing Committee for Appeals by Refugees when the Commissioner General for Refugees and Stateless Persons had not ruled on an urgent appeal within the time limit set in article 63/3, paragraph 1, of the Act of 15 December 1980, without entitling the asylum-seeker to the same right;

(ii) The inclusion of articles 57/5 bis and 57/14 bis by the Acts of 9 March 1998 providing for disciplinary action against the Commissioner General for Refugees and Stateless Persons and his deputies and against members of the Standing Committee for Appeals by Refugees who failed to uphold the dignity of their office and to fulfil their obligations.

As far as social welfare for refugee candidates is concerned, the Act of 15 July 1996 offers the possibility of designating an open reception centre as a place for compulsory registration (art. 54, para. 3). In this case, it is provided that social welfare may be obtained only in this centre (art. 57 ter of the Organization Act of 8 July 1976 on Public Social Welfare Centres) and must enable the person concerned to live a life consistent with human dignity.

70. These regulations are not likely to deter future asylum-seekers, since genuine refugees do not come to Belgium for the purpose of receiving benefits from a public social welfare centre.

71. The Act of 7 May 1999 gave the Minister or his representative the possibility of deciding on a place of registration for the categories of persons referred to in a royal decree discussed in the Council of Ministers in connection with special measures for the temporary protection of persons (art. 54, para. 1 (1) (5) of the Act of 15 December 1980).

72. The Royal Decree was issued together with the Act of 7 May 1999. It relates to the persons who were the victims of the conflict in and around Kosovo and who were authorized to reside for a limited period of time by the Minister in the context of specific measures relating to their protection.

73. In a royal decree issued on the same date, the criteria for the harmonious distribution among communes of the aliens referred to in article 54, paragraph 1, of the Act of 15 December 1980 were established in the light of this new factor.

74. The Act of 15 July 1996 also defines the obligations of Public Social Welfare Centres towards illegal aliens and rejected asylum-seekers (art. 57, para. 2, of the Organization Act of 8 July 1976). Ruling No. 43/98 of 22 April 1998 by the Court of Arbitration amends the wording of the provision and contains a more favourable interpretation for rejected asylum-seekers.

75. It should be noted that the principle that an alien who resides illegally in Belgium is always entitled to emergency medical care is clearly upheld. This concept was also defined more clearly by the Royal Decree of 12 December 1996.

D. The Aliens Act has also been adapted to halt abuses

76. The Act of 15 July 1996 eliminates assimilated refugee status. This change was necessary because it was found that applications for assimilated refugee status were originally intended to give refugee status as little publicity as possible, but had become a way of extending the length of rejected asylum-seekers' stays. "Traditional" refugee status also offers enough guarantees.

77. The Act offers the possibility of withdrawing refugee status from an alien whose status was recognized on the basis of a false or forged declaration or documents, as well as from an alien whose personal behaviour subsequently demonstrates that he has no fear of persecution (art. 57/6, para. 2 bis). In such a case, if the person concerned is not a permanent resident, the Minister or his representative may issue an order requiring him to leave the territory (art. 57).

78. Specific regulations have been introduced on the use of languages in asylum procedure (art. 51/3, as amended by the Act of 10 July 1996). The specific language regulations proposed in this article, which uses uniform and objective criteria, have three main objectives:

Clarity and legal certainty through the introduction of clear and uniform language regulations;

Exclusion of the possibility of manipulating the role of language;

Smooth case handling by the bodies and administrative departments concerned.

79. The language regulations are based on the following principles: freedom of choice in the use of a language by an alien who speaks Dutch or French and consistency in the use of that language, (the choice of language being irrevocable until the final decision).

80. The new language regulations give the alien the initiative in the sense that he decides which language will be used, since he indicates that he knows French or Dutch. If he indicates that he knows French or Dutch (he may do so in any language), the handling of the asylum application will be assigned to the division that uses the language chosen. It is in the

asylum-seeker's interest to have his application dealt with in a language that he knows and understands. If he does not know either of these two languages, however, and states that he needs the assistance of an interpreter, the language to be used will be determined by the Minister or his representative in accordance with the exigencies of service and of the courts. In this case, it does not matter to the asylum-seeker whether his application is handled in one language or the other and he will, during the proceedings, be assisted by an interpreter who knows his language perfectly.

E. Several provisions have been adapted or inserted in the regulations on aliens in order to improve their status (Act of 15 July 1996)

81. Article 10, paragraph 2, of the Act of 15 July 1996 gives aliens the possibility of being automatically allowed to reside in the Kingdom when they meet the legal requirements for obtaining Belgian nationality by declaration of nationality without having to have had their principal residence in Belgium during the 12 months preceding the application for residence and without having to make a declaration of nationality.

82. Article 18 introduces the possibility of extending the validity of the identity card for aliens up to 10 years, as is the case for Belgians.

83. Article 21, paragraph 2, rules out the possibility of ordering the return or expulsion of an alien who meets the conditions for obtaining Belgian nationality by means of a declaration of nationality.

84. Article 3 bis establishes a specific legal framework and defines the obligations of communes with regard to the assumption of responsibility for an alien who may or may not be subject to the requirement visa if he wishes to enter the Kingdom for less than three months.

85. Article 74/8 establishes the possibility for aliens detained, held in custody or kept in a closed centre to be allowed to work for remuneration.

F. Provisions relating to European Union nationals

86. The Act of 15 December 1980 was also adapted by the Act of 15 July 1996 in accordance with European Directive No. 93/96 of 29 October 1993 on the right of residence of European Union students, which defines the circumstances in which the residence of students may be terminated (arts. 44 bis and 45).

87. The Royal Decree of 12 June 1998 defines the new machinery for the implementation of European Community law following a ruling by the Court of Justice of the European Communities of 20 February 1997. The ruling made basic changes in the conditions for the residence of European Union aliens and members of their families, as well as the foreign members of the family of a Belgian national. It aims to improve the free movement of persons within the European Union, primarily for European Union nationals seeking employment

G. Article 18 bis of the Act of 15 December 1980

88. Contrary to what was recommended in the preceding concluding observations of the Committee on the Elimination of Racial Discrimination following its consideration of the reports submitted by States parties under article 9 of the Convention, there are at present no plans to amend article 18 bis of the Act of 15 December 1980.

89. This article authorizes the King, in some circumstances, to prohibit the temporary or permanent residence of some categories of aliens in certain communes. Exceptions, as well as an application for derogation coupled with the possibility of an appeal, are provided for the benefit of the aliens concerned. The purpose of the provision is to solve the integration problems that such persons might encounter when ghettoes are formed and to prevent the communes concerned from being financially overburdened. These measures are, of course, exceptional and now affect only some communes in the Brussels region.

H. Regularization of particular situations and specific residence permits

1. Regularization of particular situations

90. The circular of 15 December 1998 on the implementation of article 9, paragraph 3, of the Act of 15 December 1980 relates to the entry, temporary and permanent residence and removal of aliens and the regularization of certain particular situations.

91. The first part of the circular clarifies the conditions which an application for authorization to reside in the Kingdom for more than three months must meet in order to be submitted in Belgium (art. 9, para. 3, of the Act of 15 December 1980). The rule is that such applications must be submitted to the diplomatic or consular office in the country of origin or the country where the alien in question obtained a residence permit (art. 9, para. 2, of the Act of 15 December 1980).

92. There are two exceptions to this rule:

When an international agreement, an act or a royal decree authorizes an alien to submit his application in Belgium (see chapeau of art. 9, para. 2, of the Act of 15 December 1980);

When there are special circumstances which make it impossible to submit the application according to the usual procedure in the country of origin or in the country where the alien is authorized to reside (art. 9, para. 3, of the Act of 15 December 1980).

93. The second part of the circular described the cases in which some particular situations could be regularized, but that part was withdrawn following the entry into force of the Act of 22 December 1999 on the regularization of the stay of some categories of aliens residing in the territory of the Kingdom (*Moniteur belge* of 10 January 2000).

94. The Act of 22 December 1999 and the Royal Decree of 5 January 2000 relating to the composition and functioning of the Regularization Commission and giving effect to the Act of 22 December 1999 and the circular of 6 January 2000 on the Act of 22 December 1999 are part of a unique regularization operation for aliens belonging to one of the categories it lists. An independent regularization commission considers individual applications and makes a recommendation to the Minister. Subsequently, the Minister or his representative hands down a final decision based on the recommendation concerning the regularization of the asylum-seeker's stay.

95. The alien concerned must meet two requirements: actually reside in Belgium as at 1 October 1999 and, at the time of the application, belong to one of the four categories listed in the Act. These categories are:

(a) First category

An alien who applied for recognition of refugee status and who received an enforceable negative decision only more than four years later;

An alien who applied over four years previously for recognition of refugee status and who, at the time of his application for regularization, had not yet received an enforceable decision;

An alien who formed part of a family with school-age minor children living in Belgium on 1 October 1999, who applied for recognition of refugee status and who received an enforceable negative decision only more than three years later;

An alien who formed part of a family with school-age minor children living in Belgium on 1 October 1999, who applied for recognition of refugee status and who, at the time of his application for regularization, had not yet received an enforceable decision.

(b) Second category

Aliens who, for reasons beyond their control, cannot return to their country of origin, to the country or countries where they were living prior to arrival in Belgium or to their country of nationality.

(c) Third category

Seriously ill aliens.

(d) Fourth category

Aliens who can invoke humanitarian circumstances and who have established lasting social ties in Belgium.

96. The application for regularization could be submitted within three weeks of the entry into force of the Act to the bourgomaster, who sent it to the Regularization Commission.

97. The consistency of the application for regularization on the basis of article 2 of the Act of 22 December 1999 and article 9, paragraph 3, of the Act of 15 December 1980 is determined by article 16 of the Act of 22 December 1999.

2. More specific regulations on the regularization or authorization of residence

98. In addition to the above-mentioned instruments, there are circulars providing for the regularization of specific categories of persons, namely:

Victims of the traffic in persons (circular of 30 January 1997, *Moniteur belge* of 21 February 1997);

Persons residing illegally in the country and married to a Belgian or to a European Union national (circular of 12 October 1998, *Moniteur belge* of 6 November 1998);

Expatriates of Bosnian origin (circular of 27 October 1997, *Moniteur belge* of 18 November 1997).

99. The circular of 22 December 1999 on conditions of residence of some central and eastern European nationals who wish to engage in a non-wage economic activity or set up a company in the Kingdom (*Moniteur belge* of 4 February 2000) provides that a residence permit may be issued on specific conditions to nationals of countries which have concluded an association agreement with the European Union and its member States (Bulgaria, Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia), which guarantees the right of access to non-wage economic activities and their exercise as well as the right to set up companies, in the member States.

I. Ministerial circulars relating to Kosovars

100. Five ministerial circulars have been issued on the special temporary protection status and reception of Kosovar refugees.

101. The first, which is dated 19 April 1999 and which was published in the *Moniteur belge* of 20 April 1999, describes the general status of Kosovar refugees.

102. The second, dated 11 May 1999, expands the scope of the first circular.

103. The third, which is dated 17 May 1999 and which was published in the *Moniteur belge* of 18 June 1999, relates to the Kosovar family members of persons residing in Belgium.

104. The special temporary protection status of Kosovars was repealed by a circular of 2 December 1999, published in the *Moniteur belge* of 11 September 1999. The three above-mentioned circulars nevertheless remained in force until 2 March 2000 for Kosovar nationals benefiting from temporary protection status or having submitted an application for such status by 3 September 1999.

105. These circulars will still be in force until 30 June 2000 for families with children aged under 18 and enrolled in school.

106. The machinery for the termination of temporary protection status was defined in a circular of 15 February 2000, published in the *Moniteur belge* of 29 February 2000.

IV. LEGISLATIVE PROVISIONS ON THE ACQUISITION OF BELGIAN NATIONALITY

107. In late 1998, the legislators took an additional step in the process of improving access to Belgian nationality, which has been under way since 1 January 1985 (date of the entry into force of the Belgian Nationality Code (CNB) instituted by the Act of 28 June 1984), which has been broadened by the new naturalization procedure in force since 1 January 1996 (Act of 13 April 1995) and which has considerably shortened the average amount of time taken for the consideration of applications for naturalization (about one year).

108. By way of information, it may be pointed out that, in 1994, the figures stood at 25,787 acquisitions of nationality per year (4,195 European Union nationals, 21,592 non-European Union nationals) and, in 1997, at 31,678 (3,367 from the European Union, 28,311 non-European Union nationals). Except for 1985 (when there were 63,824 changes of nationality as a result of the entry into force of the so-called "Gol" Act), there were only about 8,000 changes in nationality per year during the second half of the 1980s.

109. The Act of 22 December 1998 amending the Belgian Nationality Code in respect of the naturalization procedure,[8] which entered into force on 1 September 1999, amends and harmonizes some procedures for acquiring Belgian nationality: the nationality declaration procedure (art. 12 bis of the CNB) and the nationality option procedure (art. 15), which is used for the "young people's" options (arts. 13 and 14) and for the foreign spouse option (art. 16), as well as for the possession of status option (art. 17) and for the recovery of Belgian nationality (art. 24). The purpose of this amendment is also considerably to improve the situation of persons who have received a negative decision from the court of first instance on their application for Belgian nationality.

110. The starting point of all these procedures is a declaration to be made by the applicant to the registry official in the commune of his principal domicile. The new Act provides that a copy of the declaration will be transmitted to the prosecutor's office of the court of first instance for its ruling. In the event of a negative ruling by the court (based, in the case of a nationality declaration, on the existence of serious personal facts and, in the case of an option declaration, on the existence of serious personal facts or a lack of willingness to integrate or the absence of one of these basic requirements), the application will be transferred automatically to the Chamber of Representatives and will thus be converted to a naturalization application, unless the person concerned expressly requests that his file should be transmitted to the court of first instance, which will, in such a case, be called upon to rule on the granting of Belgian nationality.

If his naturalization application is converted, the applicant will have an opportunity to submit a report to the Chamber in reply to the negative ruling of the Crown Prosecutor. His file will then be dealt with by the Chamber of Representatives in the same way as any other naturalization application.

111. The Act of 22 December 1998 also makes some minor technical changes in the naturalization procedure itself.

112. The new federal Government resulting from the legislative elections of 13 June 1999 submitted a bill to parliament for the amendment of the existing Belgian Nationality Code. A final vote on the bill was taken by the two Chambers in February 2000. The Act, which was published in the *Moniteur belge* of 6 April 2000, entered into force on 1 May 2000.

113. The aim is to facilitate the acquisition of Belgian nationality, which is regarded as a basic factor in the integration of aliens in the Belgian community.

V. PARTICIPATION OF NON-BELGIANS IN LOCAL ELECTIONS

114. In accordance with the obligations of the member States of the European Union under the Treaty of Rome and the directive adopted by the Council of the European Union on 19 December 1994, Belgium had to adapt its domestic legislation in order to enable foreign nationals of another member State to take part in local elections.

115. As far as Belgium is concerned, the transposition of this directive required an amendment of article 8 of the Constitution, which provided that political rights, including the right to vote, could be exercised only by Belgians. When article 8 of the Constitution was reviewed, an "open"-type amendment was finally adopted in December 1998. It removed the nationality requirement from the requirements for the exercise of political rights laid down in the Constitution itself, thereby unlocking future access for other categories of aliens to political rights at the local level. The "open"-type amendment obviously did not imply that all aliens would automatically benefit from political rights, but it did allow for the start of a discussion which might, after 1 January 2001, i.e. after the next communal elections in 2000, lead to the extension, by an act adopted by a simple majority vote, of the right to vote in communal elections to other foreign residents in Belgium.

116. In 1991, the Brussels Parliamentary Assemblies established a joint commission for discussions with foreign population groups in the Brussels-Capital Region. The commission makes recommendations on ordinances, decrees and regulations concerning immigration. It is composed of 12 members representing foreign population groups and of 12 Brussels deputies. The members representing the foreign population groups were presented by associations whose statutes provide for a contribution to the integration of foreign population groups, such as grass-roots workers, teachers from immigrant backgrounds, active members of grass-roots associations and recognized immigration experts.

VI. REPRESENTATIVE BODY FOR BELGIUM'S MUSLIM COMMUNITIES

117. Islam is Belgium's second largest religion, and it took a major step towards equality with other faiths in 1998 - 25 years after its official recognition - when, on 13 December, a general election was held for a secular leader of the Islamic faith and representative of both the Muslim community and the Government. The names of the members of the Executive were announced on 25 February 1999.

118. The Belgian experiment is first of its kind and could become a model for other European countries to adopt. At a time when Islam has become a focus of xenophobia - "Islamophobia" - an initiative of this kind, which goes against the tide, is both an important move on the part of the authorities in the direction of recognition of the religious and cultural identity of Muslim immigrants, who make up the majority of the Muslim community, and at the same time a way of loosening fundamentalist groups' hold on that community.

119. The Muslim representative body will be responsible, among other things, for the appointment of teachers of religion to work in the public school system, the secular administration of religious affairs (appointment of priests, recognition of local communities), prison chaplains, cemeteries and ritual slaughter.

VII. EMPLOYMENT AND LABOUR

120. The National Labour Council has amended its collective agreement No. 38 on the recruitment and selection of workers. Chapter III, on employers' responsibilities with regard to the recruitment and selection of workers, has been divided into sections, the first of which deals with equality of treatment. Article 2 bis makes specific provisions in this area, stipulating that an employer may not treat applicants in a discriminatory way when recruiting.

121. Employers must treat all candidates equally during the recruitment procedure. They must not make any distinction on the basis of personal criteria that have no relevance to the work or nature of the enterprise unless they are authorized or compelled to do so by law. In principle, then, employers may make no distinction on the grounds of age, sex, civil status, medical history, race, colour, parentage or national or ethnic origin, political or philosophical convictions or membership of a trade union or any other organization.

122. This provision comes in a section of the collective agreement that is now compulsory, by royal decree, and any substantiated contravention is thus liable to criminal proceedings. In addition, article 11 of the agreement deals with respect for private life and article 13 provides for the confidentiality of information; this part of the agreement has not been made compulsory and ordinary remedies apply, not the special procedures of criminal law.

VIII. FAMILY LAW

Right to marriage and choice of spouse (art. 5 (d) (iv))

Prevention of marriages of convenience

123. The Ministry of the Interior and the Ministry of Justice issued a joint circular on 28 August 1997 with the aim of clarifying certain aspects of the procedure for publishing banns of marriage and listing the documents required for marriage in Belgium or following a marriage abroad.[9]

124. The circular recalls that the right to marry is not subject to the residence situation of the parties and makes it clear that the publication of banns cannot be refused solely on the grounds that a foreigner is resident in Belgium illegally. It also recognizes that an illegal foreign resident in fact has a place of residence in Belgium and may even have a domicile, as the term is understood in civil law, if he has lived for several years in the place where he has his principal interests. Banns may therefore be published in the commune where he has a domicile or residence.

125. The circular goes on to state that, on receiving notice of the parties' intention to marry, the registrar may make efforts to ascertain whether they intend to contract a bogus marriage, but may not refuse to publish the banns except in clear and substantiated cases of fraud.

126. With regard to the marriage itself, the registrar may refuse to perform the ceremony if he believes that the parties' real intent is other than that expressed and that the purpose of the marriage is not to establish a lasting union, but merely to obtain the benefits associated with the status of a married person. (See the circular of 1 July 1994 on the conditions in which a civil registry official may refuse to perform a marriage, as described in Belgium's previous report.) As already mentioned, the fact that a future spouse is illegally resident cannot be the sole grounds for refusing to perform a marriage.

127. As mentioned above, the circular also contains information on the documents required in order to obtain a permit to marry within Belgium or a family-reunification permit following a marriage abroad.

IX. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. French Community Commission

128. As part of its mandate in the area of health and social welfare, the French Community Commission tries to maintain and develop access to quality services for the population as a whole.

129. Thus the services operating in the Brussels-Capital Region are expected to:

Promote the accessibility of consultants in financial terms, if necessary making them available free of charge;

Ensure ease of access to all consultants;

Inform users that their expenses in this regard may be covered;

Offer users remedial, therapeutic and preventive services in their places of residence;

Safeguard users' rights and, in particular, freedom of choice of service, respect for their ideological, philosophical and religious convictions, and non-discrimination on ethnic grounds.

130. On 27 April 1995, the Commission adopted a decree on the accreditation of agencies for social integration through employment and subsidies for the vocational training they provide in order to improve unemployed, low-skilled job-seekers' chances of finding a job or changing jobs, as part of a series of coordinated measures to encourage social integration through employment.

131. This policy targets unemployed job-seekers from the Brussels-Capital Region who find it impossible to meet the requirements of the jobs available on the market because they have poor qualifications or none at all or as a result of social deprivation or discrimination against the population group to which they belong.

132. The Commission also established the Brussels French-Speaking Vocational Training Institute, which opened on 1 April 1995.

133. Certificate courses are organized, providing cross-cultural training for public service officials from employment and training institutions and for association organizers. The aim is to provide them with communication skills that will help them to improve relations at the individual and group levels and with information on the multicultural nature of life in Brussels and their clients' socio-cultural background, in the context of the history of immigration in general; and to develop ways of making their training more relevant to the various cultural groups.

B. The Flemish community

1. Participation in the cultural life of the various ethnic communities in Flanders

134. Generally speaking, great efforts have been made in the socio-cultural sector (through work with young people and adult education) to eliminate all forms of racial discrimination. There are various associations for young people and adults that cater specifically for immigrants, many of whom are marginalized, to combat the social exclusion they frequently suffer. In addition, various organizations have a policy of reaching out to young people and adults from a range of cultures, as part of their regular activities. There are also training and management-training activities that focus on combating racism and on multicultural learning.

135. In the area of support for the arts, no distinction may be made on the grounds of origin, race, philosophical convictions or social or economic status. Cultural institutions are open to all (see Constitution, art. 23).

2. Relevant legislation and programmes with regard to participation in cultural life

(a) Decree on activities for young people at the regional level

136. Under this decree, organizations seeking recognition must make reference in their rules to democratic principles and procedures and endorse the European Convention on Human Rights and the Convention on the Rights of the Child. The decree also provides for positive discrimination for associations that focus on the specific target groups, defined as young people with limited opportunities to participate in social life as a result of poverty, low educational attainment, disability or an immigrant background.

137. Five associations targeted these groups in 1999. Between 1995 and 1998 (ending in 1999), associations that had made special efforts to increase the participation of children and young people from other ethnic backgrounds received a special project subsidy. The subsidy has been given to some 15 associations in all over the years.

(b) Decree on further education associations

138. This decree provides for positive discrimination for further education associations that focus on specific target groups. The immigrant target group is defined as including anyone of foreign ethnic origin residing in Belgium, with or without social or economic status, and regardless of whether he has taken Belgian nationality or not. Eleven associations working with this target group were recognized in 1999. Additional subsidies are provided for activities run by local associations in the area of education, mutual contact and culture.

3. Implementation of the provisions of the Convention with regard to employment among the various ethnic communities in Flanders

139. Recent research shows that, in many cases, immigrants still tend to lag behind native Belgians in the labour market in Flanders and to be frequently ignored by the authorities. Thus, unemployment among immigrants has reached unacceptable levels; immigrants are still underrepresented in a number of training and employment programmes; there is a problem of serious ethnic discrimination in recruitment; and there is still a real gap between natives' and non-natives' pay.

140. Given that immigrants' position in the labour market is the key to the success or failure of its policy on minorities, the Flemish Government and the Flemish social partners have agreed to take immediate steps dramatically to improve non-natives' difficult situation. Discussions launched in late 1997 by the Flemish Minister for the Environment and Labour produced an agreement within the Flemish Economic and Social Coordination Committee (VESOC), the

VESOC Immigration and Employment Agreement, whose signature on 8 June 1998 represented a major step towards real improvements in immigrants' employment opportunities and a significant addition to the basic elements of a coherent policy on minorities.

4. Implementation of the provisions of the Convention with regard to the social well-being of the various ethnic communities in Flanders

141. The decrees and orders regulating the accreditation of, and financial support for, social initiatives to help the various sectors and categories of the population expressly state that there may be no discrimination on the grounds of culture, race, sex, religion or philosophical ideas.

142. Immigrants may use social amenities and social services on the same basis as Belgians.

(a) Right to welfare and subsistence allowance (*minimex*)

143. The Public Welfare Centres (CPAS) are responsible for guaranteeing every person a life consistent with human dignity. This is done by the provision of social welfare through the CPAS. The term "welfare" often refers to social assistance in a broad sense, whereas the minimex, is purely financial aid. Welfare may take different forms: it may be financial aid for someone who is not entitled to the minimex, but who is in need; it may be a payment to supplement the minimex; it may be material or non-material (e.g., psycho-social counselling, assistance with budget management or legal advice).

144. Each CPAS is responsible for providing such assistance and therefore has full discretion in deciding what kind of aid is most appropriate.

(b) Integration policy and action to combat racism and xenophobia in Flanders

145. In order to promote a multicultural Flemish society where diversity and pluralism are valued and immigrants can easily integrate, the Flemish Government has implemented a pro-minority policy.

146. A decree dated 28 April 1998 on Flemish policy on ethnic and cultural minorities implements the policy on minorities developed over the last decade by the Flemish community. The three groups targeted in this decree - immigrants, refugees and travelling people - are defined as "ethnic and cultural minorities".

147. The policy is known as the "three-pronged policy" and comprises a policy on civil rights; a policy on the integration of new arrivals; and a policy on the reception of undocumented migrants.

148. In order to implement its policy on minorities, the Flemish community has, in addition to its network of integration centres, a minister responsible for coordination and an Interdepartmental Commission on Ethnic and Cultural Minorities (ICEM) and it is a member of the federal coordinating body, the Inter-Ministerial Conference on Immigration Policy. ICEM is

responsible for ensuring the coherence, consistency and coordination of the Flemish policy on minorities. The relevant ministerial departments and administrations and the Flemish public institutions involved must each draw up a policy on minorities and implement and evaluate it.

149. The Flemish Government recognizes three support centres, one for immigrants, one for refugees and one for travellers, as well as a Flemish Coordination Centre, which comprises the three support centres and coordinates their work.

150. The decree of 28 April 1998 also provides for the establishment of one provincial integration centre per province (the Brussels-Capital Region counts as a province) and an integration service may be established at the local level and subsidized by those communes that apply a policy on minorities.

151. Lastly, the decree provides that between 5 and 10 per cent of the total available budget must be devoted to experimental and innovative supplementary projects.

5. Implementation of the provisions of the Convention with regard to the question of housing for the various ethnic communities in Flanders

152. In general terms, housing policy in practice prioritizes all who are in need of housing in Flanders. Non-natives who need housing are in effect covered by this general, inclusive policy on housing. No specific policy has been designed for non-natives; the emphasis is rather on realization of the right to decent housing for all through the application of a general, inclusive policy.

153. The legislative framework for housing policy in Flanders is provided by the decree on the Flemish Housing Code (VWC), adopted by the Flemish Parliament on 9 July 1997. The cornerstone of VWC is the right of all to adequate housing (art. 3). The right to adequate housing is also described as a basic social right in article 23 of the Constitution. Flemish housing policy aims at the provision of adequate, high-quality housing in a pleasant environment, at a reasonable price and with some security of tenure.

(a) Immigrants' housing survey

154. A survey was conducted in 1996 in order to plot the housing situation of ethnic minorities in Flanders. The survey was organized by the Flemish ministry responsible for housing following its discovery that very little was known about these people's housing situation, but that there were a great many implicit assumptions on the subject. In order to fill this information gap, an 18-month survey on housing among ethnic minorities was launched on 1 December 1996. It was completed in July 1998, when the final report was submitted.

155. For reasons of time and resources, the survey was restricted to the four largest ethnic minorities: the Italian, Spanish, Turkish and Moroccan communities. The sample was made on a regional basis in the areas with the largest numbers of immigrants.

156. The survey reveals the following general picture: in terms of landlord-tenant relations, comfort and standard, the housing situation for immigrants from the European Union (Italy and Spain), is roughly comparable to that of the native Flemish.

157. Turks and Moroccans, on the other hand, often have problems finding reasonably priced housing of a decent standard to rent or purchase. Within the housing market, their main difficulties are with the private rental sector and they fall back on the secondary or residual sector (less comfortable, relatively high rents and poor value for money). They also encounter difficulties in the public-sector rental market. Long waiting lists and the unsuitability of existing properties for large families make access to the public housing sector difficult. There has been an increase in the purchase of properties since the early 1980s, when more and more Turks (and to a lesser extent Moroccans) began buying cheap properties, often in very poor condition, with a view to restoring them (this is known as "purchasing out of necessity").

158. Several of the reasons given explained Turks' and Moroccans' relatively poor position in the housing market. First of all, they were recent immigrants and the hope that they would return home remained strong for a long time. There were other important factors, however, such as their socio-economic situation, their fairly low standard of education and their relatively high unemployment rate. The survey also showed that, current legislation notwithstanding, this group still comes up against discriminatory attitudes on the part of owner-landlords in the private rental sector and to a lesser extent in the public rental sector.

159. The survey report concludes with certain recommendations. It recommends, for example, a comprehensive regional policy and, in some cases, a communal policy. It also recommends the introduction of a certification procedure, which should eventually help to raise standards in the private rental market. With regard to assistance with housing needs, the report stresses the vital role public renting agencies and tenants' associations can play in a given district.

(b) Definition of a target group for public housing

160. Target groups for the sale or rental of public housing or for the allocation of public loans are not defined specifically by membership of ethnic or cultural minorities. They are identified chiefly on the basis of an assessment of income (maximum allowable income) and of property ownership (must not have owned any property freehold or as beneficial owner in the past two or three years, depending on whether the application is for the purchase or rental of public housing).

161. The Flemish Government's decree of 29 September 1994 contains no regulation giving priority to non-natives.

(c) Special training for the staff of public housing associations

162. To aid communication with non-natives, courses are organized for the staff of public housing associations. A key topic, which recurs regularly in discussion, is the question of social mix. Social mix here does not mean simply a set quota of non-native residents, but also a mix of older and younger people, families and residents from various income brackets.

(d) The Ghent declaration on non-discrimination of 4 July 1997

163. The realization that there was a problem of discrimination prompted those involved in the housing sector in Ghent to sign a joint declaration on non-discrimination with other organizations and the burgomaster of the City of Ghent in 1997. The intention of the various partners was to send a clear signal to society that they wished to implement antiracism legislation in a practical way within the housing sector.

C. The Walloon Region

164. With the Walloon Parliament's adoption on 6 July 1996 of the decree on the integration of foreign persons or persons of foreign origin, the Walloon Region resolutely espoused a political philosophy emphasizing positive discrimination, the involvement of the general public, the development of public-private partnerships, support for local initiatives, the evaluation of action taken and the establishment of priority action areas. A number of mechanisms have been instituted.

1. Federation of Regional Integration Centres

165. The task of the Federation of Regional Integration Centres (FéCRI) is to act as a focal point for coordination, negotiation, human resources, training, monitoring and initiatives in the area of the integration of foreign persons or persons of foreign origin. To that end, FéCRI may propose and carry out any study or any action in support of regional integration centres or of the more general social, vocational, cultural and civic integration of foreign persons or persons of foreign origin. In particular, FéCRI is expected to develop a "transregional" approach.

166. Action by the various centres on social integration through employment is now carried out as part of the European Social Fund (ESF) Employment Initiative. This is a human resources development programme targeting groups with special problems in the labour market. There are four components to the programme, one of which, the Integra project, is geared towards disadvantaged groups, including immigrants. Projects run by the centres are co-financed by the Walloon Region.

167. The Integra project has achieved the following four objectives:

Indicators of social integration through employment for Moroccan nationals in the three countries concerned (Belgium, Italy and Spain), to aid in comparing levels of social integration through employment in those countries and in improving methods;

A computerized bibliography, to be made available on the Internet, on migration issues and aspects of social integration through the employment of foreigners with a view to establishing a network of transnational partners;

A video programme describing the special situation of immigrants in Belgium and publicizing ESF-sponsored projects;

Seminars dealing with vital issues concerning the concept of positive discrimination, cross-cultural mediation, the media and immigration.

2. Regional centres for the integration of foreign persons or persons of foreign origin

168. In the period since the adoption of the decree of 4 July 1996, six regional integration centres (CRI) have been established in six Walloon cities: Charleroi, Mons, La Louvière, Namur, Liège and Verviers.

169. The task of the CRI is to develop integration activities relating to society in general, employment, housing and health. They promote training for individuals, statistical data collection and analysis, the establishment of indicators and the publication of information designed to facilitate integration. They also provide counselling and orientation for individuals at all stages of integration, evaluate local development initiatives, encourage the participation of foreign persons or persons of foreign origin in cultural, social and economic life, and promote intercultural exchanges and respect for diversity.

170. Within this framework, the CRI have developed training courses for some of the actors involved, including a course for "ambiance assistants", to help lighten the sometimes appalling atmosphere on public transport, multicultural training for the police and cross-cultural training for secondary school teachers.

171. The CRI are run by boards made up of representatives of the public sector and local associations in equal numbers. The aim of such joint representation is to involve the various social actors more closely in designing and implementing local integration policies.

(a) Social integration through employment

172. The regional integration centres are developing a systemic approach to social integration through employment. Given the differences in the situation on the ground encountered by each centre, social integration through employment for foreigners or persons of foreign origin cannot be achieved in linear fashion, starting with a skills upgrade or pre-employment training, via occupational training. There are other aspects to be taken into account, such as literacy, countering racism, and housing and health. Ethnic origin can accelerate the processes whereby disadvantaged groups become the victims of exclusion and segregation.

(b) Local integration agencies

173. As part of this project, a special support mechanism has been set up, using networks of offices that provide information, advice and personal services relating to social integration through employment and geared specifically to immigrants' needs. It is based on a broad partnership with local private and public actors and its actions target disadvantaged urban areas in regions where the economic structure has been badly eroded.

174. The local integration agencies' task is to initiate, encourage, promote and coordinate any action or service and any joint action or partnership (local, private or public) that may help to mitigate or remove the obstacles in the way of immigrants' full participation in the social and economic life of their communities.

(c) Cross-cultural mediation

175. Following the Inter-Ministerial Conference, the Federal Minister for Social Affairs launched a cross-cultural mediation project in hospitals. In parallel with this project, the Minister for Social Welfare in the Walloon Region requested the Namur CRI and two associations to work together to develop a training course for cross-cultural mediators.

3. Local social development initiatives

176. Local initiatives subsidized by the Walloon Region are carried out as part of the regional policy on integration of foreigners or persons of foreign origin. They cover the following areas:

(a) Social or cross-cultural mediation

177. This work involves, among other things, social and/or cross-cultural mediation between persons of foreign origin and the institution or service involved (schools, local district, hospital, CPAS, commune, etc.). The aim may be to establish a permanent mechanism or action may be taken in response to a specific request.

(b) Assistance to foreigners or persons of foreign origin with regard to rights and obligations in all areas

178. Such assistance is provided in various ways: by services specializing in support and information for foreigners or persons of foreign origin on legal, administrative and social matters; reception and administrative/social aid initiatives as part of a range of actions (within a district or an association, etc.); and more structured information, awareness-raising and educational activities to enhance understanding of rights and obligations and various aspects of social, cultural, economic and political life, as well as to increase civic participation.

4. Support Fund for Immigrant Policy

179. A fund was established in 1991, at the federal Government's initiative, to finance projects to be carried out as part of the policy on integration of young people of foreign nationality or origin. The resources made available to approved projects come from National Lottery profits and from co-financing by regions and communities.

180. Projects must address the priorities established by the Inter-Ministerial Conference on Immigration Policy: social and/or vocational integration in accordance with the needs of young people of foreign nationality or origin, and particularly 16 to 25-year-olds; spending on infrastructure and provision of public sporting and social/cultural premises, particularly for 6 to 25-year-olds; and efforts to counter truancy and dropping out of school, targeting particularly 3 to 18-year-olds.

181. In 1998, funding amounting to 194,321,331 Belgian francs was provided for 98 projects in all: 22 of these were coordinated by communes in partnership with local associations, 9 were run by CPAS and 67 by associations.

182. Forty-five per cent of these projects related to social integration through employment, 38 per cent to efforts to reduce school drop-out rates and 16 per cent to infrastructure investment.

Article 6

Judicial action on complaints

183. Statistics on racism and on complaints of racial discrimination brought before the courts and on action taken by the courts are provided by the Criminal Policy Unit.

184. According to data obtained from the Police Support Unit (SGAP), 50 offences involving racism and xenophobia were reported by the three police services and referred to the prosecutor's office in 1996, as compared with 87 cases in 1997. SGAP has confirmed that it hopes in future to publish separate figures on such offences; they would thus no longer be subsumed, unmarked, under the more general category of "protection of the person".

185. The Centre for Equal Opportunity and Action to Combat Racism reports that, regardless of eventual legal proceedings, it received 477 complaints of racism in 1994, 644 in 1995, 1,086 in 1996 and 1,472 in 1997. Legal proceedings were brought, either by the complainant or by the Centre, in 59 cases in 1996 and in 5 per cent of cases in 1997. The Centre has brought suits for damages in 32 cases (there is no indication of year or years).

186. With regard to action taken on complaints of racism and xenophobia, the Centre for Equal Opportunity and Action to Combat Racism has statistical data relating only to the 32 cases in which it has brought suits for damages:

> By the end of 1997, 14 of those cases had been closed: 6 of these had been dismissed or shelved with no further action; in 3 cases, a sentence of acquittal had been handed down; 1 had been resolved by mediation; in 4 cases, a conviction had been handed down; and, in 1, a submission by the Centre in the proceedings of the Council of State had been deemed inadmissible.
>
> As of the end of 1997, 18 cases were still outstanding.

187. The Centre also notes that the majority of the complaints brought before it were dealt with directly either through mediation or by direct intervention with the services involved or through advice to the complainant.

188. The Criminal Policy Unit, which provides statistical support, has prepared figures on convictions, suspensions and custodial sentences (enforceable decisions) since 1993, on the basis of information held in the judiciary's central registry and, specifically, information falling into the category of "racism and xenophobia".

189. The following are the figures for 1993, 1994 and 1995, the last year for which data is available:

1993: two notices of judgement and final sentencing of two individuals;

1994: six notices of judgement and final sentencing of six individuals;

1995: 17 notices of judgement and final sentencing of 17 individuals.

190. Owing to time constraints, only the data for 1995 on the sentences imposed on these individuals has been analysed. The results are shown in the tables annexed.

191. It is not yet possible to integrate the statistics on sentences with those relating to procedures further upstream in the criminal justice system. A vertical integration project is currently under way in the Ministry of Justice.

192. Additional comments:

Offences that may involve racism and xenophobia are in practice frequently categorized under some other heading, such as "assault and battery".

The Centre for Equal Opportunity and Action to Combat Racism also points out that it favours mediation wherever possible; that complainants are sometimes reluctant to make their complaints into a judicial issue; and that, although many people believe themselves to be victims of racist or xenophobic behaviour, it is extremely difficult to gather the kind of precise evidence the law requires.

Article 7

A. Education and teaching

1. Teaching

193. For information on the Flemish community, see previous reports.

194. The French community has in recent years enacted three important pieces of legislation that all affect immigrant reception in one way or another, including with regard to teaching. The first of these is a decree dated of 24 July 1997 that defines the primary tasks of basic education and secondary teaching and establishes the structures necessary to carry out those tasks. It is the first time an official document has defined the social role of the education system and there is one segment of the school population it could not fail to mention - children from immigrant backgrounds. The decree concerns the school population as a whole and draws attention at various points to what is required for integration, inclusion and reception.

195. The second decree, dated 30 June 1998, aims to give all students equal opportunities for social empowerment, in part by introducing mechanisms for positive discrimination. Under this decree, any distinction on social, economic, cultural or educational grounds favouring general basic or secondary educational establishments or institutions established or subsidized by the French community constitutes positive discrimination (art. 3, para. 1).

196. The criteria are explicit and show that this policy covers migrants, but not only migrants. Under article 4, paragraph 1, positive discrimination may apply to any establishment, school or institution that takes a certain proportion - which, under paragraph 3, is set by the Government for basic education and for secondary education - of students living in districts with the following characteristics:

A lower standard of living than the national average for the socio-economic stratum, taking into account the dwelling, the household resources per household member and the level of education;

A greater percentage of unemployed than among the population as a whole;

A greater percentage of families in receipt of the minimex or social welfare.

The support provided may take the form of human or material resources.

197. Human resources may be provided as follows, under article 5 of the decree:

Primary school teachers, in order to help reduce group or class size, set up transitional classes or introduce ability-based teaching;

Secondary school teachers, in order to help reduce group size, introduce ability-based teaching or provide transitional classes for non-French-speaking students; and auxiliary teaching staff, head teachers or deputy heads;

Temporary social workers or social worker/nurses in psycho-medico-social centres.

198. Material resources may be provided as follows, under article 5, paragraph 2 of the decree:

Provision of premises for meetings, audiovisual libraries, libraries, documentation and resource centres; or purchase of books, newspapers, magazines, CD-ROMs, audio and video cassettes; resources to be shared, if necessary, by several neighbouring schools, even if they belong to different school districts;

Service contracts with cultural, sporting and educational organizations;

Organization of sporting activities and broadly cultural events.

199. The problem of educational provision for children residing illegally in Belgium has also been solved by making it possible for them to attend school: under article 40 of the decree, minors residing illegally in Belgium, provided that they are there with their parents or other person with parental authority, may be admitted to educational establishments. School heads may also enrol unaccompanied minors, but, in such cases, they must see that the minor takes appropriate action to place himself in the care of some institution, so that parental authority can be exercised on his behalf.

200. Under article 41 of the decree, the Government may, in whatever manner it sees fit, authorize a school that accepts a minor in accordance with article 40 to count such a child in its student numbers for the purpose of subsidies, provided that the child has attended the school regularly for at least four months at the time of the count.

201. The third decree, dated 13 July 1998, deals with the organization of nursery and general primary education and amends the regulations governing such teaching. The decree applies only to the nursery and primary levels. It contains three important points:

(a) Language and culture of origin programme

202. For the first time, bilateral agreements on a language and culture of origin (LCO) programme are specifically mentioned, following the signature of Charter 1997-2000 by the partner Governments of Greece, Italy, Morocco, Portugal and Turkey. Although this programme was already running as an educational experiment, it had never had the official status conferred on it by this decree. This is a good example of action in schools on behalf of children of immigrant backgrounds. Article 1, paragraph 23, explains what is meant by courses in language and culture of origin: courses which are designed to raise awareness of the language and culture of countries or groups of countries that have been a source of major inflows of migrants which are provided in order to assist integration into the community.

(b) Transition to the teaching language

203. In order to ensure the best possible schooling for all, additional help is provided for children whose mother tongue is not French.

204. Under article 32, paragraph 1, for example, three periods a week may be set aside for classes to aid transition to the teaching language for stateless, foreign or adopted children in the following cases:

> Their mother tongue or the language they normally use is different from the teaching language;
>
> They have attended a primary school within the French community or subsidized by the French community for less than three full years and do not know the teaching language well enough to participate successfully in class activities;
>
> Their parents or guardians are domiciled or resident in Belgium but do not have Belgian nationality, except in cases of adoption.

(c) Religious education

205. According to article 24, paragraph 3 (2), of the Constitution and article 8 of the Act of 29 May 1959, all students have the right to moral and religious education. In addition to non-faith moral convictions, five religions are recognized: Catholic, Protestant, Judaism, Islam and Orthodox. In this way, it is possible for most children of immigrant backgrounds to receive religious instruction in accordance with the wishes of the head of the family.

206. These three decrees address the overall operation of the education system, ways of providing the disadvantaged with the best possible education and recognition and acceptance of cultural and religious differences.

207. They well illustrate the role the French community wishes its schools to play as places where children can acquire knowledge, social behaviours and an understanding of society and which promote integration and the creation of a harmonious society.

B. Young people

1. Flemish decree on local activities for young people

208. Twenty per cent (around 100 million francs) of the total budget allocation to local authorities and the Flemish Community Commission for activities for young people is earmarked for associations providing such an activity as part of the Flemish Government's prioritization policy. This policy gives priority to activities for socially disadvantaged children and young people. Subsidies to local authorities are calculated on the basis of projects for socially disadvantaged children and young people who have applied to be covered by the policy on activities for youth.

2. The French Community's Youth Service

209. The Youth Service of the Department of Culture recognizes and subsidizes many associations involved in cross-cultural work with a range of communities. It supports many different initiatives by publicizing multicultural events and productions of a cross-cultural nature or dealing with citizenship.

210. Associations and authorities within Belgium's French community sponsored numerous initiatives during and after the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance launched by the Council of Europe on 10 December 1994. The main aim was to encourage young people to think about intolerance and act against it.

211. The Youth Service also runs two special programmes:

(a) Été-Jeunes summer programme for young people

This programme is run jointly by the Government of the French Community and the college of the French Community Commission in the Brussels-Capital Region. The culture-youth component emphasizes the integration of young people through cultural events.

The partnership requirement remains one of the cornerstones of the Été-Jeunes programme, since it encourages local actors to cooperate and prepare joint projects that will meet young people's needs in the best way possible.

(b) Quartier libre programme

Launched in 1996, this programme aims to encourage young people to express themselves through cultural activities and group productions, as a means of combating social disintegration.

Notes

[1] See D. Voorhoofd, *Racismebestrijding en vrijheid van meningsuiting in België: wetgeving en jurisprudentie*, Gent Academia Press, 1995, pp. 170 et seq.

[2] F. Jongen, *La responsabilité pénale et civile de la presse*, J. P., 1991, No. 196, p. 12.

[3] B. Blero, op. cit., p. 210.

[4] See the parliamentary bill of Mr. Eerdekens and Mr. Janssens, *Doc. Parl.*, Ch., No. 1084/1-96/97 and the parliamentary bill of Mr. Viseur and Mr. Deleuze, *Doc. Parl.* Ch. s.o. 1405/1-97/98.

[5] *Doc. parl.*, Ch., s.o. 1084/25-97/98.

[6] *Moniteur belge* of 18 March 1999.

[7] Protocol of agreement of 2 February 1999 between the postal service and the Centre for Equal Opportunity and Action to Combat Racism.

[8] *Moniteur belge* of 6 March 1999.

[9] Circular on the procedure for publishing banns of marriage and on the documents required to obtain a permit to marry within Belgium or a family-reunification permit following a marriage abroad (*Moniteur belge*, 1 July 1997) [see copy of the circular annexed].